

16 April 2023

ACCC
ANZ Suncorp Merger
Email: ANZ-Suncorp-Merger@acc.gov.au

Dear ACCC,

Re: Further submissions to ACCC's Preliminary Views on ANZ Suncorp Merger

Thank you for including me in this next round of submissions, where the ACCC have found targeted areas, they need more information before making a final decision.

ANZ's declining markets is self-inflicted by its treatment of its customers

Firstly, I refer to paragraphs 4.22 and 4.23 of the ACCC's Preliminary Views. ANZ have submitted that it has experienced a decline in market share in home loans, retail deposits and SME Lending. The ACCC understands that ANZ's rationale for the Proposed Acquisition is to provide immediate growth in the areas of home lending, household deposits, business lending, business transactions and business deposits because they are lagging behind the other three tier one banks.

I refer to my first submission in which I set out details of court decisions where ANZ admitted to hurting more than 1,000,000 customers. These court decisions were all made on ANZ's own admissions. Then they made deliberate decisions not to remediate the customers that they hurt. If ANZ did a proper analysis of this they should work out, but have not, that if they had treated their existing customers better, remediated them willing rather than making deliberate decisions to not pay remediation, they would have had a chance to keep their existing customers. Instead, they are looking to stanch their self-inflicted wounds by trying to increase their customer base with the Proposed Acquisition of Suncorp. This is marketing 101. It is cheaper to keep the customer you have rather than continually to put work into trying to take the other bank's customers from them.

Australia and New Zealand Banking Group Limited v Ashcroft & Ors [2021] QSC 293 provides the Queensland Supreme Court's description of how ANZ tried to have that Court order that Ms Ashcroft execute a mortgage, where ANZ Bank had agreed in error to discharge a mortgage and lost the security. The Court stated at [2] "[T]he action arises out of a series of self-inflicted injuries suffered by ANZ, which have been exacerbated by the clumsiness of its attempts to stanch those wounds".

Further in this decision the Court stated that on 21 May 2021 Boddice J of the Queensland Supreme Court ordered that ANZ were to serve any proposed amended statement of claim on the Ashcroft defendants and provide the particulars the defendants' had previously requested from ANZ, because its Statement of Claim had not provided them. There was no court order requiring ANZ to file the proposed Amended Statement of Claim prior to providing it to the Ashcroft defendants. In spite of the Court order requiring provision of the amended Statement of Claim prior to filing, ANZ chose instead to file and serve it. The purpose of Boddice J's orders was to allow the defendants to see the proposed amendments and to make any objection to them, so that ANZ could deal with these

objections before the amended pleading was filed. This decision states “[T]hat, though, apparently did not appeal to ANZ.”

Further this decision sets out that ANZ then alleged Ms Ashcroft had tried intentionally to defraud creditors. The Court found that these pleadings were bold and misconceived. All after ANZ had made the error that led to the discharge of the mortgage. This is why ANZ’s market in all areas has declined. It is their unwillingness of accepting their errors, not taking full responsibility for same and coming after its customers with baseless allegations. If they had treated their customers better, their market would not have declined to the point that it has.

Co-ordinated conduct

The ACCC’s preliminary view is that relevant markets in Australia presently exhibit signs of co-ordinated conduct or are more susceptible to co-ordination. At paragraph 4.13 of the ACCC’s preliminary review the ACCC talks of concerted practices which is any form of co-operation between two or more persons; or conduct that is likely to establish such co-operation typically facilitated by the exchange of strategic commercial information. The ACCC also raises conventional co-ordinated effects referring to firms engaging in conduct that although not necessarily individual profit maximising in the short run, increases individual and joint profits in the long run. Such conduct is sustained by repeated interactions between firms and their ability to observe and punish competitors that deviate from mutually beneficial strategies.

Suncorp and ANZ have participated in co-ordinated conduct over an extended period where ANZ were joint lead managers and/or book runners for Suncorp’s securitisation trusts and covered bonds. This required the exchange of strategic commercial information so that ANZ could help facilitate structured finance arrangements for Suncorp. Both securitisation and covered bonds are structured finance arrangements that convert an illiquid asset to a liquid asset to enable it to be sold. At a minimum ANZ were joint lead managers and book runners for Suncorp’s Apollo Series Trusts, specifically including Apollo Series 2013-1 Trust, Apollo Series 2015-1 Trust, Apollo Series 2017-2 Trust and Apollo Series Trust 2022-1 Trust. Securitisation and covered bonds are the sale of Suncorp’s loans that have registered mortgages as security that are sold to investors. Further the Apollo Series 2022-1 Trust is dated 3 June 2022 when ANZ announced its purchase of Suncorp on 18 July 2022.

A book runner is in the position to assess a company’s financials and current market conditions to arrive at the initial value and quantity of shares in the securitisation trusts to be sold to private parties. In some cases, this extends to being responsible for keeping an investors’ books in order. Also, in some cases it gives the book runner the role of determining the position of other parties such as investors. Lead managers find the investors to buy the investment. But all of this is done for joint profit of both Suncorp and ANZ, amongst other banks also involved.

ANZ have been joint lead managers in Suncorp’s covered bonds as a minimum - CB series 2022-2 issue date 17 October 2022, CB Series 2022-1 issue date 7 October 2022, CB Series 2020-1 issue date 27 April 2020, CB series 2018-1 issue date 15 September 2018, CB series 2018-2 issue date 13 September 2018 and CB series 2016-2 issue date 24 August 2017. All of this is co-ordinated conduct where both Suncorp and ANZ are increasing their individual and joint profits over an extended period.

Further the ACCC has provided its preliminary views on the prospect of a second-tier bank buying Suncorp. Two banks named as possible candidates are Bendigo and Adelaide Bank (“**BEN**”) and Bank of Queensland (“**BOQ**”). ANZ had the opportunity as book runner of Suncorp’s Apollo Series 2022-1 Trust to being privy to Suncorp’s financials and market conditions just weeks prior to announcing its purchase of Suncorp, when BEN and BOQ would not have this opportunity.

Landmark – an example of prior co-ordinated conduct that proves Suncorp is not a one off


In approximately 2010 ANZ bought Landmark’s loan book of agribusiness loans. Rabobank and ANZ were joint financiers of this loan book prior to ANZ buying it.

Evidence at the Financial Services Royal Commission and Parliamentary inquiries going back to at least 2016 provide evidence of ANZ’s mistreatment of farmers/agribusiness owners after they purchased this loan book. Agribusiness owners who had no arrears were defaulted on by ANZ obtaining a revaluation of their properties. ANZ denied that they had not treated these agribusiness owners and farmers poorly in Parliamentary hearings. In 2018 at the Financial Services Royal Commission, Ben Steinberg, Head of ANZ Lending Services, changed their position and admitted they had not acted fairly to these rural businesses and individuals. Then CEO Mike Smith even handed property back to a Victorian farmer admitting they were wrong to take the property under enforcement where there had been no arrears. Unfortunately, any rural business owner who was not the subject of any negative publicity for ANZ, were not treated equally and did not receive their properties back.

The loans were part of the Landmark Rural Program which consisted of two trusts with a funding structure originally set up to finance the loans provided by Landmark to Australian Rural businesses and individuals. Permanent Custodians Limited (“**PCL**”) was the trustee of both trusts. Landmark was the originator and servicer responsible for the day-to-day conduct of the loans including communications with customers in respect of their loans. On ANZ’s purchase of the Landmark loan book ANZ replaced Landmark as servicer of the loans. ANZ were granted power of attorney from PCL to act on PCL’s behalf regarding lending, including in relation to enforcement of loans in any legal proceedings. However, despite this PCL were still listed as the party in many enforcement court proceedings.

On the sale to ANZ the loans were transferred to a new ANZ trust. The loans on transfer remained on the same terms and conditions including term/length of the loan, interest and obligations to fund any undrawn committed loans. Despite all of this in a 2016 Parliamentary inquiry ANZ denied any impropriety and stated that different business units within ANZ were responsible for the wholesale lending to Landmark and then the enforcement of the loans under the revaluations with no arrears.

This Landmark Rural Program is another example of ANZ in co-ordinated conduct with Landmark and Rabobank, where Landmark, ANZ and Rabobank made individual and joint profits from the financing of this loan book and ANZ’s subsequent purchase of same. As pointed out above with the issue around ANZ losing its customers because of its conduct when it makes a mistake, this is further proof that when confronted with errors ANZ have made themselves, that are detrimental to them, they refuse to accept responsibility. If they would just accept their errors and wrongdoing and work with the customer to correct this, their business may not be in the decline that it is. History just keeps repeating itself.

If you require any further information or have any queries, please do not hesitate to contact me on  or by email.

Kind regards
Carolyn Thomson